



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:080. Classification of UST systems containing petroleum [~~underground storage~~
6 ~~tank systems~~] and listing of associated cleanup levels.

7 RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.60, 40 CFR Part 280
8 Subparts F, G, Part 281, 42 U.S.C. 6991-6991c

9 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137, 40 CFR Part
10 280 Subparts F, G, Part 281, 42 U.S.C. 6991c

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the
12 Environmental and Public Protection Cabinet [~~Natural Resources and Environmental Protection~~
13 ~~Cabinet~~] to promulgate administrative regulations on underground storage tank (UST) systems to
14 protect public health and the environment. The statute recognizes that the administrative
15 regulations may distinguish between types, classes, and ages of UST systems. KRS 224.60-137
16 requires the cabinet to adopt standards for corrective action for a UST system release of
17 petroleum into the environment. [~~from a petroleum UST system.~~] This chapter identifies
18 requirements for UST systems containing petroleum. This administrative regulation establishes
19 site [~~facility~~] classification and corrective action standards for [~~petroleum~~] UST systems
20 containing petroleum.

1 Section 1. Scope and Applicability. (1) An owner or operator who either submits a notice
2 of intent to permanently close a UST system containing petroleum or reports a confirmed UST
3 system release of petroleum to the cabinet after the effective date of this administrative
4 regulation shall at the time of permanent closure of the UST system, or when otherwise directed
5 by the cabinet in order to appropriately classify the UST system, submit a Classification Guide,
6 DEP 8056 (January 2006) incorporated by reference in Section 3 of this administrative
7 regulation. The Classification Outline (January 2006) [document] incorporated by reference in
8 Section 3 [Section 2] of this administrative regulation shall be used in completing the [facility]
9 Classification Guide, DEP 8056 (January 2006) for determining the classification of a site. [sets
10 forth a classification scheme for all petroleum UST systems] The Classification Outline (January
11 2006) also sets forth the applicable [The document also establishes] cleanup levels for petroleum
12 constituents for each classification to be complied with by the owner or operator in completing
13 corrective action. [The cleanup levels for petroleum constituents at a particular facility are
14 determined by the classification of the UST system.]

15 (2) The owners and operators of a UST system containing petroleum who have, prior to
16 the effective date of this administrative regulation, either submitted a notice of intent to
17 permanently close the UST system, or reported a confirmed UST system release of petroleum to
18 the cabinet, shall comply with the classification requirements and cleanup levels for all
19 constituents, with the exception of lead in soils, that were in existence at the time the notice of
20 intent to permanently close UST system was received by the cabinet or the confirmed release
21 was reported to the cabinet.

22 (3) The cleanup level for lead in soils, contained in the Classification Outline
23 incorporated by reference in Section 3 of this administrative regulation, shall apply to all UST

1 system releases containing waste oil occurring prior to the effective date of this administrative
2 regulation.

3 ~~[(1)(a) Subsection (2) of this section and Section 2 of this administrative regulation shall~~
4 ~~apply to UST systems for which a "Notice of Intent to Permanently Close Underground Storage~~
5 ~~Tank System Form" (DEP Form 5025) (incorporated by reference in 401 KAR 42:070) is~~
6 ~~received by the Underground Storage Tank Branch of the Division of Waste Management on or~~
7 ~~after January 1, 1996 and to UST systems for which a confirmed release is reported after January~~
8 ~~1, 1996.~~

9 ~~(b) Subsection (2) of this section and Section 2 of this administrative regulation shall~~
10 ~~apply to UST systems for which a confirmed release was reported or a closure notice was~~
11 ~~received by the Underground Storage Tank Branch of the Division of Waste Management prior~~
12 ~~to January 1, 1996 as follows:~~

13 ~~1. For any confirmed release reported prior to January 1, 1996 or any "Notice of Intent to~~
14 ~~Permanently Close Underground Storage Tank System Form (DEP Form 5025) received prior to~~
15 ~~January 1, 1996, but for which a closure letter had not been issued by the cabinet prior to that~~
16 ~~date, the UST systems addressed in that release report or closure notice may be closed under this~~
17 ~~administrative regulation if the owner or operator submits to the Underground Storage Tank~~
18 ~~Branch of the Division of Waste Management a letter indicating their commitment to close the~~
19 ~~UST system or address the release pursuant to this administrative regulation.~~

20 ~~2. The letter referenced in subparagraph 1 of this paragraph shall contain the~~
21 ~~identification number for the site; the name, address, and phone number of the facility or~~
22 ~~company where the UST system is located; the name, address, and phone number of the tank~~
23 ~~owner; and an explicit statement of the action being requested. The letter shall be signed by the~~

owner or operator. The request shall apply to all UST systems referenced in the release report or closure notice received by the Underground Storage Tank Branch of the Division of Waste Management prior to January 1, 1996.

(2) The document incorporated by reference in Section 2 of this administrative regulation shall be used in meeting the requirements of this administrative regulation.]

Section 2. Affected Property Owner Consent. If an affected off-site property owner consents, the allowable residual soil levels applicable on-site may be utilized in addressing contamination within the property boundaries of that consenting off-site property owner. Such consent shall be submitted to the cabinet on the "Affected Property Owner Consent Form", DEP 8057 (January 2006) and shall be accompanied by a site map identifying the location and address of the affected property in relation to the site.

Section 3. [~~Section 2.~~] Incorporation by Reference. (1) The following documents are hereby incorporated by reference:

(a) "[~~Petroleum Underground Storage Tank System Facility~~] Classification Outline" (January 2006) [~~(October 1995)~~];

(b) "Classification Guide", DEP 8056 (January 2006) [~~Form 6053 (October, 1995)~~]; and

(c) "Affected Property Owner Consent Form", DEP 8057 (January 2006); and [~~Form 6054 (October, 1995).~~]

(d) "Kentucky Guidance for Ambient Background Assessment" (January 2004).

(2) The documents referenced in subsection (1) of this section are available for inspection and copying, subject to copyright law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Blvd [~~of the Division of Waste Management, 14 Reilly Road,~~] Frankfort, Ky 40601, (502) 564-5981 [~~(502) 564-6716~~], from 8 a.m. to 4:30 p.m. eastern time, Monday through

- 1 Friday, excluding state holidays [~~holidays.~~] and may also be obtained on the Division of Waste
- 2 Management's web page located at www.waste.ky.gov.

401 KAR 42:080 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
Division of Waste Management
14 Reilly Road
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Bruce.Scott@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:080

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes classification and corrective action standards for petroleum UST systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish classification and corrective action standards for petroleum UST systems.

(c) How this administrative regulations conforms to the content of the authorizing statutes: This administrative regulation establishes criteria to distinguish between the type, class and age of a UST and the corrective action standards for petroleum releases from USTs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes classification and corrective action standards for petroleum UST systems.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment serves to update the incorporated materials on classification and corrective action standards.

(b) The necessity of the amendment to this administrative regulation: This amendment serves to update the incorporated materials on classification and corrective action standards.

(c) How the amendment conforms to the context of the authorizing statutes: This administrative regulation establishes criteria to distinguish between the type, class and age of a UST and the corrective action standards for petroleum releases from USTs.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will update the classification and corrective action standards in order to protect human health and the environment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky,

approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment only updates the incorporated materials for UST systems.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs associated with implementation of this administrative regulation.

(b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two Federal grants and the restricted fund receipts described in KRS 224.60-150.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. To apply tiering to the amendment would unduly regulate some entities with USTs while ignoring others.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:080

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes ☒ X ☐ No ☐ If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect. This amendment may affect local governments that own or operate underground storage tanks.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate underground storage tanks. KRS 224.10-105 authorizes the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): see below

Expenditures (+/-): see below

Other Explanation: The cabinet expects no significant impact from this administrative regulation.

**DETAILED SUMMARY OF MATERIAL
INCORPORATED BY REFERENCE IN
401 KAR 42:080**

I. This administrative regulation incorporates by reference the “Classification Outline”, (January 2006). This document is used to classify a site and establish the clean-up levels, based on the potential impact to human health, safety and the environment.

This document consists of 27 pages.

II. This administrative regulation incorporates by reference the “Classification Guide”, DEP 8056 (January 2006). This document is used to classify a site based on both on-site and off-site conditions.

This document consists of 7 pages.

III. This administrative regulation incorporates by reference the “Affected Property Owner Consent Form”, DEP 8057 (January 2006). This document is used by a UST owner or operator to obtain the consent of an affected owner to allow elevated contamination levels to remain beyond the facility property boundary.

This document consists of 1 page.

IV. This administrative regulation incorporates by reference the “Kentucky Guidance for Ambient Background Assessment” (January 8, 2004). This document is used to assist UST contractors in their environmental assessments of UST facilities.

This document consists of 9 pages.